

HOUSE BILL 3286
By Patton

AN ACT to amend Tennessee Code Annotated, Title 36, Chapter 6, relative to child custody and visitation.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 36, Chapter 6, is amended by adding Sections 2 through 14 as a new, appropriately designated part:

SECTION 2. As used in this part, unless the context otherwise requires:

(1) "License" means a license, certification, registration, permit, approval or other similar document issued to an individual evidencing admission to or granting authority to engage in a profession, trade, occupation, business, or industry, to hunt or fish, or to operate any motor vehicle or other conveyance, but does not include a license to practice law unless the supreme court establishes guidelines pursuant to Section 12 making the provisions of this part applicable to such license;

(2) "Licensee" means any individual holding a license, certification, registration, permit, approval, or other similar document evidencing admission to or granting authority to engage in a profession, trade, occupation, business, or industry, to hunt or fish, or to operate any motor vehicle or other conveyance; "licensee" does not include an attorney only with respect to the attorney's license to practice law unless the supreme court establishes guidelines pursuant to Section 12 making the provisions of this part applicable to such license;

(3) "Licensing authority" means the board, commission, or agency, including the department of safety, which has been established by statute or state regulation to oversee the

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issuance and regulation of any license. Excluded from this definition is the supreme court, unless the supreme court acts in accordance with Section 12, and any licensing authority established solely by the action and authority of a county or municipal government;

(4) "Not in compliance with an order of visitation" means that a custodial parent has failed on two (2) occasions in any six (6) month period to turn over custody of the child to the non-custodial parent for scheduled visitation without good cause;

(5) "Order of visitation" means any order granting a non-custodial parent the right to visit with such parent's child on days and times determined by the court.

SECTION 3. In all cases where visitation is ordered, the custodial parent shall comply with such order of visitation by turning over custody of the child to the non-custodial parent on the days and times so ordered by the court. An order of visitation may be enforced by using the license revocation, denial or suspension procedures provided in this part and any other sanctions deemed appropriate by the court.

SECTION 4. (a) A non-custodial parent who has been denied scheduled visitation with such parent's child by the custodial parent on two (2) occasions in any six (6) month period may petition the court having jurisdiction over the order of visitation for a finding that the custodial parent is not in compliance with an order of visitation. Upon receiving such petition, the court shall serve upon the custodial parent a notice that informs the custodial parent of the court's intention to submit the custodial parent's name to the appropriate licensing authority as a licensee who is not in compliance with an order of visitation. Such notice shall state that:

(1) The custodial parent may request a hearing to contest the issue of compliance;

(2) A request for a hearing must be made in writing and must be received by the court within twenty (20) days of service;

(3) If the custodial parent requests a hearing within twenty (20) days of service, the court shall stay the proceedings to certify the custodial parent to any appropriate licensing authority for noncompliance with an order of visitation pending a decision after the hearing;

(4) If the court finds that the custodial parent is not in compliance with an order of visitation and the custodial parent does not request a hearing within twenty (20) days of service, the court shall certify the custodial parent to any appropriate licensing authority for noncompliance with a court order of visitation; and

(5) If the court certifies the custodial parent to a licensing authority for noncompliance with an order of visitation, the licensing authority, notwithstanding any provision of law to the contrary, must deny a renewal request, revoke the custodial parent's license or refuse to issue or reinstate a license, as the case may be, until the custodial parent provides the licensing authority with a release from the court pursuant to Section 9 that states the custodial parent is in compliance with the order of visitation.

(b) The notice sent pursuant to this section shall also include a statement informing the custodial parent of the need to obtain a release from the court in order to allow the custodial parent's license to be issued, renewed or reinstated. The notice shall be served by certified mail, return receipt requested, or by personal service with an affidavit of service completed by an authorized process server.

SECTION 5. (a) If a custodial parent requests a hearing pursuant to this part to contest the court's intention to issue a finding of noncompliance to a licensing authority, the court shall conduct the hearing only to determine:

(1) Whether the licensee is a custodial parent required under an order of visitation to allow the non-custodial parent to visit with a child;

(2) Whether the licensee is not in compliance with an order of visitation; and

(3) Whether good cause exists to impose the licensing sanctions provided for in this part.

(b) The parties may enter into a consent order wherein the custodial parent agrees to comply with the order of visitation and a schedule of makeup visitation periods equal to the number of visits missed due to the custodial parent's noncompliance, in such a way that is

timely and reasonable for the non-custodial parent. Upon entry of such an order the proceedings for licensing sanctions shall be further stayed unless there is noncompliance with the consent order. In the event of noncompliance with the consent order, the stay shall cease and the court shall certify to each licensing authority which licenses the custodial parent that the custodial parent is not in compliance with an order of visitation. Entry of such consent order shall constitute a waiver of the custodial parent's right to any hearing on the issue of noncompliance with an order of visitation based upon the notice of noncompliance for which the consent order has been entered.

(c) The cost of this action and reasonable attorney's fees shall be taxed to the custodial parent who is not in compliance with an order of visitation.

SECTION 6. (a) If a custodial parent timely requests a hearing to contest the issue of compliance, the court shall stay the action and may not certify the name of the custodial parent to any licensing authority for noncompliance with an order of visitation until the court issues a written decision after a hearing that finds the custodial parent is not in compliance with an order of visitation, provided, that after a decision by the court has been made in the form of a final order as provided in § 4-5-315, there will be no further stay unless a reviewing court issues a stay.

(b) The court shall issue its decision after hearing without undue delay. The decision must inform the custodial parent that the custodial parent may file an appeal of the decision within thirty (30) days of the date of the decision. The court shall send an attested copy of the decision to the custodial parent by regular mail to the custodial parent's most recent address of record and to any attorney representing the custodial parent in connection with the hearing under this part.

(c) Upon a finding of noncompliance, the court shall also allocate additional time with the child to the non-custodial parent equal to the number of days missed due to the

noncompliance, and scheduled in such a way that is timely and reasonable for the non-custodial parent.

(d) Notwithstanding any law to the contrary, the court shall assess costs of an unsuccessful appeal of notice of noncompliance to the custodial parent.

SECTION 7. The court shall certify in writing or by electronic data exchange to each licensing authority which licenses the custodial parent that the custodial parent is not in compliance with an order of visitation if:

(1) The custodial parent does not timely request a hearing upon service of notice issued under Section 4;

(2) The custodial parent has not entered into a consent order as provided for in Section 5, or having entered into such an order, has failed to comply with such order;

(3) The court issues a decision after a hearing pursuant to this part that finds the custodial parent is not in compliance with an order of visitation; or

(4) In any proceeding to enforce any provision of an order of visitation, the court finds a custodial parent to be not in compliance with the order of visitation and the non-custodial parent specifically prayed for relief in the form of license revocation, denial or suspension.

SECTION 8. (a) Notwithstanding any other law, rule or regulation to the contrary, the certification from the court under Section 7 shall be a basis for the denial, suspension or revocation of a license, or for refusal to issue, renew, or reinstate a license by a licensing authority.

(b) The licensing authority shall notify, without undue delay, by regular mail, a custodial parent certified from the court under Section 7, that the custodial parent's application for the issuance, renewal or reinstatement of a license has been denied or that the custodial parent's current license has been suspended or revoked because the custodial parent's name has been certified by the court as a custodial parent who is not in compliance with an order of visitation.

(c) A notice of suspension shall specify the reason and statutory grounds for the suspension and the effective date of the suspension and may include any other notices prescribed by the licensing authority. The notice shall also inform the individual that in order to apply for issuance, renewal or reinstatement of the license, the individual shall obtain a release from the court in accordance with Section 9.

(d) If a licensing authority fails to deny, suspend or revoke a license when so ordered by a court pursuant to this part, the non-custodial parent may petition the court to compel the authority's compliance and may seek any appropriate sanctions against such authority.

SECTION 9. (a) When a custodial parent who is served notice under Section 4, or whose license was otherwise revoked, denied or suspended by order of the court, complies with the order of visitation, the court shall provide the licensing authority with written or electronic data exchange confirmation that the custodial parent is in compliance with the order and issue a release to the custodial parent. For purposes of lifting the licensing sanctions pursuant to this section, a custodial parent will be considered in compliance with an order of visitation upon delivering custody of the child to the non-custodial parent for visitation on the next four (4) consecutive scheduled visitation periods after the finding by the court of noncompliance.

(b)(1) Upon receipt of the release from the court, the licensing authority shall issue or extend the custodial parent's license, or withdraw any denial, revocation or suspension of the custodial parent's license provided that all other applicable licensing requirements are met by the custodial parent. If all other applicable licensing requirements are met by the custodial parent, the custodial parent shall not, however, be required to be re-tested or re-certified for a license which was valid and which was held in good standing by the custodial parent, or for which the custodial parent had been determined otherwise eligible by the licensing authority to receive, prior to the revocation or suspension or denial of such license pursuant to this part, and which license was revoked, suspended or denied solely pursuant to the provisions of this part.

(2) If, after the revocation, suspension or denial of the license, and before the date on which the next periodic licensing would be due, the license is restored or issued by the licensing authority due to a release, the custodial parent shall not be required to pay a new periodic license fee for the period remaining before the next periodic licensing fee would be due; provided, the licensing authority may impose a reasonable reinstatement fee not to exceed five dollars (\$5.00) for processing of the restoration or issuance of the license at any time.

SECTION 10. The various licensing authorities shall cooperate with the court in any manner necessary to effectuate this part, and the court and the various licensing authorities shall enter into any necessary agreements to carry out the purposes of this part.

SECTION 11. Nothing in this part prohibits a custodial or non-custodial parent from filing a motion with the court to modify an order of visitation or a custody order.

SECTION 12. (a) In addition to other qualifications for licensure or registration and conditions for continuing eligibility to hold a license as prescribed by law, rule or regulation issued under the provisions of titles 43, 44, 45, 55, 56, 62, 63, 68, 70 or 71, for an individual to engage in a profession, trade, occupation, business, or industry, to hunt or fish, or to operate any motor vehicle or other conveyance, applicants for licensure, certification or registration, and licensees renewing their licenses, and existing licensees, must not then be subject to a certification that the licensee is not in compliance with an order of visitation.

(b) The supreme court is encouraged to establish guidelines to suspend the license of an attorney who fails to comply with an order of visitation.

SECTION 13. In actions under this part, the court shall provide a non-custodial parent with available information concerning the name and address of any licensing authority of the custodial parent. The non-custodial parent shall pay a reasonable fee as established by the court for the provision of such service.

SECTION 14. This act shall take effect upon becoming a law, the public welfare requiring it.

